

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

B&G FOODS NORTH AMERICA, INC.,

Plaintiff,

v.

KIM EMBRY and ENVIRONMENTAL
HEALTH ADVOCATES, INC., acting as
enforcement representatives under California
Proposition 65 on behalf of the State of
California,

Defendants.

Case No. 2:20-cv-00526-KJM-DB

**DECLARATION OF DAMIEN GADOMSKI
OF INSTITUTE FOR ENVIRONMENTAL
HEALTH, INC.**

Judge: Hon. Kimberly Mueller
Magistrate: Hon. Deborah Barnes
Action Filed: March 6, 2020

DECLARATION OF DAMIEN GADOMSKI

1 I, Damien Gadomski, declare:

2 1. I am a Laboratory Director at the Institute for Environmental Health, Inc. dba IEH
3 Laboratories & Consulting Group ("IEH"). I am familiar with the facts stated herein, and if called
4 upon as a witness, I could testify to the following facts based on my own personal knowledge.

5 2. IEH provides independent laboratory testing services. IEH serves a broad range of
6 food industry clients.

7 3. One of the food products submitted to IEH by Nicholas & Tomasevic, LLP for
8 acrylamide testing was listed as item 8 with the Customer Sample ID "SW's FF Cookie Cakes"
9 (the "Cookie Cakes"). Attached hereto as **Exhibit A** is a true and correct copy of the "IEH Sample
10 Submission Form" dated March 29, 2019, requesting acrylamide testing for this item and other
11 food products. Certain information from the form has been redacted.

12 4. The Cookie Cakes sample was received by IEH on April 1, 2019. This is confirmed
13 by the "IEH Use Only" portion of the Submission Form as well as the test report itself, or what
14 IEH calls the "Certificate of Analysis," indicating the sample was received on "4/1/2019."
15 Attached hereto as **Exhibit B** is a true and correct copy of the Certificate of Analysis involving
16 IEH's testing of the Cookie Cakes. Certain information from the form has been redacted.

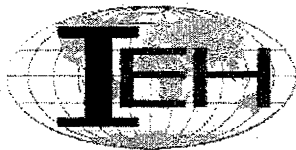
17 5. IEH's acrylamide testing of the Cookie Cakes was reported on April 4, 2019, as
18 evidenced by the Certificate of Analysis, revealing an acrylamide concentration of 643 parts per
19 billion (ppb). The testing method utilized to assess the acrylamide level in the Cookie Cakes was
20 liquid chromatography with tandem mass spectrometry (LC-MS/MS).

21 6. IEH receives, processes, and tests thousands of samples of perishable food products
22 on a monthly basis. IEH's standard retention policy is to retain its clients' samples for a minimum
23 of two weeks after the Report Date listed on the Certificate of Analysis. As there was no direction
24 to keep the Cookie Cakes for a longer duration they were disposed of as per IEH's standard
25 retention policy.

1 I declare under penalty of perjury under the laws of the United States that the foregoing is
2 true and correct. Executed on July 12, 2024, in Seattle, Washington.

3
4 By: *Damien Gadomski*
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

**Laboratories & Consulting Group****IEH Sample Submission Form**

F81/GN021/02

Customer Information				Completed and signed sample submission form indicates agreement with IEH terms and conditions and authorizes IEH to perform the requested test(s). To protect the confidentiality of customer information, IEH will only include a unique Customer ID and Job ID on final reports instead of the customer name and address.		
Technical Contact: Emilia Carrillo				Please check preferred option(s) for receiving results (Electronic documents will be provided in Adobe Acrobat (PDF) format).		
Invoicing Contact: Emilia Carrillo						
Company Name: Nicholas & Tomasevic, LLP				<input type="checkbox"/> Fax to:		
Phone: (619) 325-0492						
Street Address: 225 Broadway, Suite 1900				<input checked="" type="checkbox"/> E-mail to: ecarrillo@nicholaslaw.org ; ntfileclerk@nicholaslaw.org		
City, State, Zip: San Diego, CA 92101				<input type="checkbox"/> Mailed Page 1 of 1		
Purchase Order #:				Turn around time requested*: <input type="checkbox"/> Routine <input type="checkbox"/> Expedited <input type="checkbox"/> Emergency		
Item #	Customer Sample ID	Sample Type e.g. air, water, meat, surface wipe, etc.	Analyses Requested** e.g. Quantitative Tests (QNT): APC, TCC, ECC, LAB, AnPC, PSYCH; AnPSYCH; Y&M; ST Total; ST Fungi; Viable Fungi; Env. Bact; Ent. Bact; Qualitative Tests (QL): ECO157, Salm, List, Lm, Other (describe)	Total Volume/Area (as applicable)	Comments Write below as you want them to appear on the final report (Please use separate sheet if you would like to provide additional information about your samples).	IEH Use Only
e.g.	RX-142233	Water	QNT: APC+TCC + ECC	N/A	Purified Water Sample	
8	SW's FF Cookie Cakes	Cake	Acrylamide			
Sample Condition: <input type="checkbox"/> Frozen <input type="checkbox"/> Refrigerated <input type="checkbox"/> Other (describe):						
Date/Time Sample(s) Shipped: 03/29/2019						
* Emergency Services require prior notification and sample arrival by 9:00 AM PST, Mon - Sat. Please call our Service Representative at 206-522-5432 for more information regarding turn around time, price and other conditions. ** Definitions for abbreviations: APC=Aerobic Plate Count (Total Plate Count); TCC=Total Coliform Count; ECC=Coliform/E. coli Count; LAB=Lactic Acid Bacteria Count; AnPC=Anaerobic Plate Count; PSYCH=Aerobic Psychotrophic Count; AnPSYCH=Anaerobic Psychotrophic Count; Y&M=Yeast & Mold Count; ST Total=SporeTrap (Zefon or equiv.) Total Dust; ST Fungi=Spore Trap (Zefon or Equiv.) Fungi only; Viable Fungi=Viable Fungi (2 STD Media Bulk or Swab); Env. Bact=Environ. Bacteria, 30°C Incu.; Ent. Bact=Enterobacteria, 37°C Incu.; ECO157=E. coli O157:H7 Detection; Salm=Salmonella spp. Detection; List=Listeria spp. detection and Lm=L. monocytogenes detection.						
Customer Special Instructions:				Submitted By (print): Kaila Garrido		
				Authorized Signature:		
IEH Use Only						
Customer ID #:		Job ID # / IEH Project #:		File Name / Sample Set #:		
Date/Time Received:		Due Date/Time:		<input type="checkbox"/> Send Results to IEH Project Manager:		
IEH Special Instructions/ Customer Follow up:				Received By (print):		
				Authorized Signature:		

4/11/19, 3:30 AM
(8) Samples RT

EXHIBIT B



IEH
**Laboratories &
Consulting Group**

Case 2:20-cv-00526-KJM-SJR Document 190-23 Filed 05/19/24 Page 7 of 7

CERTIFICATE OF ANALYSIS

Nicholas & Tomasevic, LLP

Contact: Lindsay Beatty
225 Broadway, Suite 1900
San Diego, CA 92101
Phone: 619-325-0492

IEH Laboratories & Consulting Group

IEH Analytical Laboratories
3927 Aurora Avenue North
Seattle, WA 98103
Phone: (206) 632-2715 Fax: (206) 632-2417
www.iehinc.com

TRADE SECRET / CONFIDENTIAL COMMERCIAL INFORMATION

WO: 1705360		Samples Received: 4/1/2019		Report Date: 4/4/2019		Report No: IAL-5532	
Lab Sample ID		Client Sample ID		Matrix		Acrylamide (ppb)	

UNLESS OTHERWISE NOTED, ALL SAMPLES WERE RECEIVED IN ACCEPTABLE CONDITION. THE RESULT(S) IN THIS REPORT RELATE ONLY TO THE PORTION OF THE SAMPLE(S) TESTED. THIS REPORT DOES NOT CONSTITUTE A RELEASE OF PRODUCT FOR CONSUMPTION. THIS REPORT SHALL NOT BE REPRODUCED EXCEPT IN FULL, WITHOUT WRITTEN APPROVAL OF THE LABORATORY. THIS DOCUMENT CONTAINS CONFIDENTIAL COMMERCIAL INFORMATION PURSUANT TO 5 U.S.C. SEC. 552(b)(4).

Authorized Analyst: Zach Gottschalk